

The respondent requests review of the ALJ's preliminary hearing Order. Respondent maintains claimant's alleged injury was caused by a single traumatic event rather than by repetitive use. Thus, respondent contends claimant is not entitled to benefits because she failed to give notice of her alleged accident within ten days as required by K.S.A. 44-520. In addition, respondent denies claimant's alleged injury arose out of and in the course of her employment.

Claimant argues that she gave timely notice of her work injuries and as such, the ALJ's preliminary hearing Order, as it relates to compensability, should be affirmed. In addition, claimant contends the ALJ erred in failing to grant her request for additional treatment. Claimant requests the Appeals Board (Board) grant her request for additional treatment.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, the Board finds the ALJ's preliminary hearing order should be affirmed.

Claimant is employed as a janitor for a school district. She testified that on June 2, 2003 she was in the process of buffing a floor when she slipped and twisted. Claimant caught herself before falling to the floor but she testified that she hurt the lower left side of her back. Claimant thought the pain would improve but it did not. Claimant indicates she informed Rex Watson, the principal of her school, that her back was injured. While Mr. Watson confirms that he had a conversation with claimant, probably on June 10, 2003, he denies claimant specifically told him the injury was work-related. He merely knew she had back pain and required medical attention.

Although claimant was initially off work a few days, she returned to work and continued to perform her normal work duties, including moving furniture and cleaning floors and carpets. Her low back complaints continued until June 18, 2003 when she told her immediate supervisor, Rusty Lindsay, she was going to the chiropractor. Claimant sought treatment from Dr. Charles Fenton, a local chiropractor who she had seen a handful of times over the previous 10 years. Dr. Fenton noted low back pain and took her off work.

On June 23, 2003 claimant reported a work-related injury to the respondent's superintendent.

At the preliminary hearing, the ALJ concluded that claimant had properly given notice. The ALJ found that while claimant may have suffered an acute injury on June 2, 2003, she continued to work performing her normal duties until June 18, 2003, which continued to aggravate her condition. For that reason, Judge Fuller found the June 23, 2003 notice, five days after the last date worked, was sufficient under Kansas law.

When presented with an appeal from a preliminary hearing, the Board gives some deference to the administrative law judge's findings because the ALJ has the unique opportunity to personally observe the witnesses testifying and is in the best position to assess the witnesses' credibility.¹ In this instance, the ALJ apparently found claimant's

¹ *Morales v. Monfort, Inc.*, Nos. 208,815 and 219,228, 1997 WL 378653 (Kan. WCAB June 18, 1997).

testimony credible on the issue of her acute injury and ongoing aggravations up to June 18, 2003 as well as notice. After reviewing the record, the Board finds no reason to set aside the ALJ's findings.

Claimant continued to work past the date of her acute injury, performing strenuous work moving furniture and cleaning floors and carpets. This fact substantiates claimant's contention, and the ALJ's finding, that claimant sustained a series of injuries arising out of and in the course of her employment with respondent up to June 18, 2003. Although claimant's conversations in the days following her acute injury with her direct supervisor, building principal and the director of housekeeping could have been more specific, it is uncontroverted that claimant provided respondent with notice on June 23, 2003, five days after her last date of work. For this reason, the ALJ's preliminary hearing Order is affirmed in all respects.

WHEREFORE, it is the finding, decision and order of the Board that the Order of Administrative Law Judge Pamela J. Fuller dated February 6, 2004, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of April 2004.

BOARD MEMBER

c: Brian D. Pistotnik, Attorney for Claimant
Terry J. Malone, Attorney for Respondent and its Insurance Carrier
Pamela J. Fuller, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director